RAHYA TRADING SDN BHD

v.

TONG KHIN COMPANY SDN BHD & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
ABU BAKAR JAIS JC
[SUIT NO: 24NCC-96-03-2013]
25 OCTOBER 2013

COMPANIES AND CORPORATIONS: *Oppression - Minority shareholder - Company solely involved in business of letting of premises - Premises sold off - Minority shareholder attempted to dispose of and sell shares to majority shareholder - Offer to sell shares not accepted by company - Minority shareholder forced to continue with any other business company might venture into - Whether amounted to minority oppression - Whether disregard of minor shareholder's interest - Companies Act 1965 s. 181*

The first defendant ('the company') owned certain premises and its sole business was the letting of the premises. Through a director's resolution, the premises were sold off for RM25 million. The plaintiff, a minority shareholder, wanted to dispose of its shares and subsequently, attempted to sell the shares to the second defendant, the majority shareholder. However, the offer to sell was not accepted. The plaintiff proceeded to file originating summons under s. 181 of the Companies Act 1965 against the company and the second defendant for an order that the shares be purchased by the second defendant or the company. The plaintiff further sought that in the event the company purchases the shares, there would be a reduction of capital of the company or the company would be wound up. It was the plaintiff's contention that it became the shareholder of the company as it had the intention of being involved in the letting of premises but since the premises had been sold off, there was no longer such business. The plaintiff further submitted that to be forced to continue with any other business that the company might venture into, would be an act of oppression as well as in disregard of the plaintiff's interest. Against the second defendant, the plaintiff's complaints were that (i) as a majority shareholder, the second defendant had failed to indicate what were the businesses being contemplated to be ventured into by the company; and (ii) the second defendant had thwarted even the attempt to sell the plaintiff's shares to persons or other companies other than the existing shareholders and immediate family of persons registered as shareholders.

Held:

(1) An affidavit sworn and affirmed by a director and shareholder of the second defendant showed that the second defendant had acted in disregard of the plaintiff's interest and had acted in an oppressive manner against the plaintiff. In the face of this clear admission, it would be wrong for the court to find that the plaintiff's interest had not been disregarded and that there were no actions which were oppressive against the plaintiff. (paras 23 & 25)

(2) The directors of the second defendants themselves were in disagreement and the episodes of disagreements showed that they were not minor disagreements but were serious in nature that could affect the operation of the company and had in any event affected the interest of the plaintiff as a minority shareholder of the company. The incidents were not isolated cases that would not materially affect the operation of the company but taken as a whole, the instances of serious disputes and disagreements among the directors of the second defendant could seriously hamper the smooth-running of the company and in any event, the plaintiff should not be burdened and be caught unnecessarily in these disputes. (paras 36 & 37)

(3) In an extraordinary general meeting of the company, the plaintiff had enquired what business venture would the company undertake in the future after the premises for letting had been disposed of. This meeting was held more than one year since the shareholder's resolution to sell the premises. Yet, in this meeting, the directors representing the second defendant did not answer the question what was the business which the company wanted to be involved in but merely said that there were many businesses the company could venture into as stated in the clauses of the company. (paras 40, 41 & 42)

(4) The decision of the plaintiff was reasonable and fair in wanting to leave the company as the company itself was no longer involved in any business. It was not reasonable for the company to let the plaintiff be guessing for so long on the business it wants to be involved in. There was element of oppression for the company to still insist that the plaintiff remain as shareholder when the company itself had not decided on whatever business venture it wants to be involved

in. The plaintiff could not be expected to remain as the shareholder of the company indefinitely after the successful disposal of the premises and the company could no longer demand the participation of the plaintiff if it could not itself determine its future direction in terms of business. (paras 45, 46 & 47)

(5) There was, on the balance of probabilities, evidence of oppression suffered by the plaintiff in the hands of the company in the turning down of the request by the plaintiff to sell its entire shares to any person or company other than the existing shareholders and immediate family of persons registered as shareholders. The rejection by the company was evidence of oppression on the part of the company against the plaintiff as it was fully-aware that it was not engaging in any business at that point of time yet it refused the reasonable proposal by the plaintiff to sell its shares. (paras 52 & 54)

(6) The plaintiff, as a substantial shareholder, had every right to reap the rewards of the profitable sale of the premises and exit the company or use that proceeds to venture into other business on its own. The plaintiff was deprived of these opportunities when the company took longer than the reasonable time to decide on its new business. (para 62)

Case(s) referred to:

Chua Kien How v. Goodwealth Trading Pte Ltd & Anor [1992] 2 SLR 296 ***(refd)***

Koh Jui Hiong & Ors v. Ki Tak Sang & Ors [2009] 10 CLJ 205 HC ***(refd)***

Lew Siew Moi, Datin v. Ann Loong Holdings Sdn Bhd & Ors [2010] 1 LNS 1430 HC ***(refd)***

Owen Sim Liang Khui v. Piasau Jaya Sdn Bhd & Anor [1996] 4 CLJ 716 FC ***(refd)***

Re Kong Thai Sawmill (Miri) Sdn Bhd; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung [1978] 1 LNS 170 PC ***(refd)***

Legislation referred to:

Companies Act 1965, s. 181

For the plaintiff - Abu Daud Abdul Rahim (Ahmad Suffian with him); M/s Azmi & Assocs

For the defendants - Ringo Low (Poo Ling Yee with him); M/s Ringo Low & Assocs

[Editor's note: On 26 May 2014, the Court of Appeal in Civil Appeal No: W-02(NCC)(A)-2428-11/2013, allowed the appeal by Thong Khin Company Sdn Berhad & Anor and set aside the decision of the High Court herein.]

Reported by Najib Tamby

JUDGMENT

Abu Bakar Jais JC:

Material Facts

[1] This case relates to allegations of minority oppression where the plaintiff as minority shareholder says it is being oppressed and its interest is being disregarded by the second defendant the majority shareholder in the first defendant ('company') and therefore seeks an order from this court pursuant to the oft-quoted s. 181 of the Companies Act 1965.

[2] At the outset, it is most appropriate to state that the above provision reads:

> (1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister, may apply to the Courts for an order under this section on the ground:
>
> (a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the members or holders of debentures including himself or in disregard of his or their interest as members, shareholders or holders of debentures of the company; or
>
> (b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including himself).
>
> (2) If on such application the Court is of the opinion that either of those grounds is established the Court may, with the view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and without prejudice to the generality of the foregoing the order may:
>
> (a) direct or prohibits any act cancel or vary any transaction or resolution;
>
> (b) regulate the conduct of the affairs of the company in future;
>
> (c) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;

(d) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or

(e) provide that the company be wound up.

(3) Where an order that the company be wound up is made pursuant to subsection (2)(e) the provisions of this Act relating to winding up of a company shall, with such adaptations as are necessary, apply as if the order had been made upon a petition duly presented to the Court by the company.

(4) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Act, but subject to the order, the company concerned shall not have power without the leave of the Court to make any further alteration in or addition to the memorandum or articles inconsistent with the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company.

(5) An office copy of any order made under this section shall be lodged by the applicant with the Registrar within fourteen days after the making of the order.

[3] The plaintiff owns 14 percent of the company issued and paid up shares ('shares') and the second defendant owns 53.2 percent of the shares.

[4] The company owned certain premises and its sole business was the letting of these premises.

[5] Through a directors' resolution on 28 June 2011 and approved by a shareholders' resolution on 19 July 2011 the premises were sold off for RM25 million gaining substantial profit in 2011 and therefore the company ceased to have a business.

[6] Subsequent to the sale of the premises, the plaintiff wanted to dispose of its shares and was not interested to continue with any other businesses that the company may want to venture into.

[7] The plaintiff then attempted to sell its shares to the second defendant as the majority shareholder of the company but the offer to sell was not accepted.

[8] Thereafter, the plaintiff proposed that the company be wound up as the company was no longer into any business. This was also rejected by the company.

[9] Based on the foregoing, the plaintiff filed originating summons ('OS') against the company and the second defendant for an order from this court that;

(a) its shares be purchased by the second defendant or;

(b) in the alternative, its shares be purchased by the company;

(c) in the event the purchase is by the company, there is a reduction of the capital of the company;

(d) in the alternative, the company be wound up.

The Summary Of The Plaintiff's Submission

[10] The plaintiff says when it became a shareholder of the company it was with the intention of being involved in the letting of the premises, the only business of the company then.

[11] As the premises had been sold off, there is no longer such business and to force the plaintiff to continue with any other businesses that the company may venture, is an act of oppression as well as in disregard of the plaintiff's interest.

[12] Further the second defendant being the majority shareholder had failed to indicate up till now and since the disposal of the premises in 2011 as to what are the businesses being contemplated by the company to venture into. This *inertia* is according to the plaintiff another act of oppression and in disregard of the interest of the plaintiff.

[13] Also the complaint against the second defendant is that it had thwarted even the attempt to sell the plaintiff's shares to persons or other companies other than the existing shareholders and immediate family of persons registered as shareholders.

[14] For all the actions or inactions of the second defendant as majority shareholder of the company, the plaintiff says the second defendant must take over the shares of the plaintiff at a fair price which according to the plaintiff is RM1.82 million or RM26 per share given the asset and liability of the company.

[15] Alternatively the plaintiff demands that its capital investment be returned and there be capital reduction of the company or this court to make an order of winding up of the company.

[16] The plaintiff submits that the winding up order requested is appropriate in that the proceeds obtained by the sale of the premises had been used to repay all creditors.

The Summary Of The Defendants' Submission

[17] The defendants submission as supported by and reflected *vide* the affidavit opposing the OS, strenuously asserts that both the defendants were all material times acting only for the company's best interest and that by implication means also the interest of the plaintiff.

[18] Material to be considered according to the defendants is the refusal of the plaintiff to proffer any explanation as to why it is not interested to participate in the new businesses that the company may venture into. The decision of the plaintiff as minority shareholder in refusing to participate towards the effort of the majority shareholder in venturing into new businesses cannot be imposed unilaterally against the wish of the majority shareholder and in disregard of the company's interest.

[19] After all, the defendants assert that by virtue of Article 3 of the Articles of Association ('AA') of the company, it is stated that the company could be involved in various businesses and this clause reads:

> The business of the Company shall comprise all the business mentioned or included in the Memorandum of Association and all incidental matters and the business shall subject to the provisions of these Articles be carried out by or under the management of the Directors and according to such regulations as the Directors may from time to time prescribe and any branch or kind of business which the Company is authorized to carry on may be undertaken and may be suffered to be in abeyance whether such branch or kind of business may have been actually commenced or not so long as the Directors shall from time to time deem advisable.

[20] The defendants further submit that it is inappropriate to wind up the company at this stage as there is a court action taken by the company against three individual that includes the director and shareholder of the plaintiff for breach of fiduciary duties as directors of the company.

A **Section 181 Of The Companies Act 1965**

[21] As can be seen, the provisions of s. 181 of the Companies Act 1965 as earlier alluded in this judgment provides for four grounds for the plaintiff to prove in the alternative to request for the orders it is seeking now before this court. These grounds are;

B

(a) oppression;

(b) disregard of its interests;

C (c) discrimination;

(d) prejudicial actions against it.

[22] This court will therefore be analysing the facts to see and judge whether the plaintiff has proven the above grounds in the D alternative to agree that the provisions of this section is operative for the orders requested to be considered.

Admission

E **[23]** First and foremost this court seriously takes note of an affidavit sworn and affirmed by a director and shareholder of the second defendant itself on 10 May 2013 to say that the second defendant had acted in disregard of the plaintiff's interest and had acted in an oppressive manner against the plaintiff.

F **[24]** This affidavit is sworn and affirmed by one Hoh Kiang Po who is also the shareholder and director of the company.

[25] In the face of this clear admission it would be wrong for this court to find that the plaintiff's interest has not been disregarded G and there were no actions which were oppressive against the plaintiff.

[26] This court however despite this admission, must be cautious to simply take the words of this director and is completely mindful that it must determine whether there is other evidence to suggest H that the plaintiff has proven it case instead of solely relying on this admission.

[27] On that note, this court therefore will narrate further the facts of this case to show on the balance of probabilities there is I indeed other evidence to find that the plaintiff has proven its case.

Conduct Of Directors And Shareholders Representing Second Defendant

[28] Also relevant to be taken into account is the antecedent incidents regarding the conduct of the directors representing the second defendant in running the affairs of the company to show how the plaintiff's interest was gradually affected and as a consequence it became increasingly untenable for the plaintiff to remain being a shareholder of the company.

[29] These conducts too indicate that it was prejudicial for the plaintiff if it is to remain as shareholder of the company and the difficult circumstances that was created for the former to continue participating and engaging in the latter.

[30] First the directors of the second defendants themselves were in disagreement when it was proposed by the director representing the plaintiff that the company pay dividend in the board of directors' meeting ('BOD meeting') on 6 November 2012 amounting to RM16 million. This was proposed as at that time the company had no revenue generating activities having sold its premises with huge profit and no indication as to what are the new businesses its wishes to venture into.

[31] Two directors representing the second defendant, the said Hoh Kiang Po and one Ho Han Keyet voted in favour of this proposal while some other directors and shareholders also representing the second defendant voted otherwise.

[32] Further in this meeting too, when Ho Han Keyet enquired as to the future business that the company would be involved in, another director of the company one Hoh Kiang Seong also representing the second defendant brushed him aside in saying since the proposal to pay dividend is rejected, there is no need to explain what the company would be involved in terms of its business in future.

[33] There were also further disagreements among the directors representing the second defendant in the BOD meeting on 14 November 2012 when Hoh Kiang Po representing the second defendant question another director of the same the reason for the failure of the latter to notify the attendees at the BOD meeting on 6 November 2012 of the calling of a different meeting.

[34] In this meeting too Hoh Kiang Po representing the second defendant proposed that the company be wound up as after the sale of the premises with substantial profit, the company was not involved in any business.

[35] Again this was opposed by the other directors representing the second defendant and therefore by vote of majority the company was not wound up.

[36] These episodes showed that the disagreements among the directors representing the second defendant themselves are not minor disagreements but are serious disagreements that can affect the operation of the company and had in any event affected the interest of the plaintiff as minority shareholder of the company.

[37] These incidents are not isolated cases that would not affect materially the operation of the company but taken as a whole these instances of serious disputes and disagreements among the directors of the second defendant could seriously hamper the smooth running of the company and in any event the plaintiff should not be burdened and be caught unnecessarily in these disputes.

[38] Precisely because of these disputes and disagreements among the directors representing the second defendant too, the interest of the plaintiff is affected and these differing views and approaches by these directors were prejudicial to the plaintiff.

[39] These decisions too taken as a whole are prejudicial to the plaintiff for it is entitled to still be the shareholder of the company only if the company could run its affairs without any unnecessary material disputes among its directors.

Extraordinary General Meeting On 11 December 2012

[40] This court must also take into account the events that transpired in the extraordinary general meeting of the company on 11 December 2012 to see whether there is evidence relating not only to the assertion that there was oppression on the plaintiff but also to see whether the interest of the plaintiff had been affected as well as whether there is evidence that it is prejudicial for the plaintiff to remain as shareholder.

[41] In this meeting the plaintiff had enquired what business venture will the company undertake in future after the premises for letting had been disposed of with handsome profit as this was the only business that the company was engaged in at that time.

[42] It is most significant to note that this meeting was held after more than one year since the shareholders' resolution on 19 July 2011 to sell the premises. Yet in this meeting, directors representing the second defendant did not answer the question what is the business the company wants to be involved in but merely said there are many businesses the company could venture into as stated in the clauses of the company.

[43] Therefore after more than one year since the successful sale of the premises with substantial profit the company was not involved in any business.

[44] In fact as it stands, even now there is still no new business being undertaken by the company.

[45] The decision of the plaintiff was therefore reasonable and fair in wanting to leave the company as the company itself was no longer involved in any business.

[46] It is not reasonable for the company to let the plaintiff be guessing for so long on the business it wants to be involved and in this regard it showed that there is element of oppression for the company to still insist the plaintiff remain as shareholder when the company itself had not until now decided on whatever business venture it wants to be involved in.

[47] The plaintiff could not be expected to remain as the shareholder of the company indefinitely after the successful disposal of the premises and the company could no longer demand the participation of the plaintiff if it cannot itself determine its future direction in terms of its business.

[48] When the plaintiff became the shareholder of the company it is undisputed that the sole business of the company was the letting of the premises. Not only the plaintiff but both defendants therefore were fully aware that the risk in the business was only connected to the letting of the premises alone and there were no other risk as that was the only business it was involved in.

[49] To require the plaintiff to remain as shareholder to venture into other businesses, which are still undecided, is not the bargain the plaintiff entered into with the company. It cannot be forced to stay on as shareholder under that circumstance. The plaintiff was only interested in the business of letting the premises and no other businesses.

[50] The situation must be recognised to be different had the company been involved in other businesses apart from the letting of the premises when the plaintiff became a minority shareholder. Had this been the case, the plaintiff could not be let off easily in wanting to leave the company. The company could fairly request the plaintiff to stay on as shareholder as the plaintiff would then be fully aware of the other businesses the company was involved. However this is admittedly not the case as there was only one business by the company ie, the letting of the premises.

[51] Also the fact remains that since the disposal of the premises with substantial profit, the company was no longer in active business and up until now, for more than two years since the shareholders' resolution on 19 July 2011, the company could still not decide the business it wants to undertake.

Acts Of Oppression

[52] There is also on the balance of probabilities evidence of oppression suffered by the plaintiff in the hands of the company in the turning down of the request by the plaintiff to sell its entire shares to any person or company other than the existing shareholders and immediate family of the persons registered as shareholders under Article 35(A)(b) and (g) of the AA of the company.

[53] This offer to sell its share was done in a BOD meeting on 18 February 2013. However this was rejected by the company.

[54] The rejection by the company is evidence to this court of oppression on the part of the company against the plaintiff as it is fully aware that it was not engaging in any business at that point of time, yet it refused the reasonable proposal by the plaintiff to sell its shares.

[55] This action on the part of the company is to tie the plaintiff to the company unnecessarily when the company was not venturing into any business at that point of time.

[56] This attempt to sell was made after the plaintiff offered according to the provisions of the AA to sell the shares first to the majority shareholders, then to all existing shareholders and lastly to all immediate family of persons registered as shareholders but unfortunately all these offers were to no avail as there were no takers for the same.

[57] Despite wanting to sell the shares to third-party after the offers were made to sell it internally, the company simply refused to accept this reasonable proposal of the plaintiff. It is only fair and just for the company to accept this proposal, after all it is to be paid by outsiders since the own members and immediate family members of the company had declined the offers. Yet the company without any reasonable reasons chose to be difficult in frustrating the offer made by the plaintiff and such unreasonable conduct must inevitably be held against the company to indicate it had oppressed the plaintiff.

[58] This offer by the plaintiff is absolutely fair bearing in mind the company was no longer engaged in any business at the point of time when the offer was made. In that sense it was only understandable for the plaintiff wanting to exit the company.

Indecision – New Business

[59] One of the factors that this court considers seriously to find that the plaintiff has proven its case is the indecision of the company in the new business it proposes to venture after the sole business it was involved ceased with the sale of the premises.

[60] It may be the case that the company *vide* the memorandum & articles is authorised and has the power to be involved in other businesses after the sale of the premises but the long delay until now to determine and take the necessary action towards commencing the new business, had not only prejudiced and was in disregard of the plaintiff's interest but also in the mind of this court is indeed an act of oppression for there is no justification whatsoever for the company to delay in deciding the business it wants to pursue and as a consequence letting the plaintiff to stand in limbo for so long.

[61] One could easily appreciate that in the commercial world, the expectant approach is for business decisions to be made promptly almost to the point of it being instantaneous. Any unnecessary delays will cause the players to suffer not only lost opportunities but possible monetary losses.

[62] Here in this case the plaintiff being a substantial shareholder has every right to reap the rewards of the profitable sale of the premises and exit the company or use that proceeds to venture into other business on its own. The plaintiff is thus deprived of these opportunities when the company took longer than the reasonable time to decide on its new business.

[63] It is only acceptable and reasonable to deduce that had the company decided early on its intended business if any, the plaintiff might be persuaded to stay in the company. That delay also has caused the plaintiff that very opportunity to decide on that possible action.

After Sale – Winding Up Proposal

[64] After the sale of the premises with substantial profit, there was a BOD meeting on 18 January 2012, where it was unanimously agreed that the company be wound up after dividends are paid as the company was no longer engaged in any businesses with the successful sale of the premises.

[65] Therefore at that point of time all parties had intended that the company will wind down it affairs completely towards a total cessation of its business and thereafter move separately enjoying the benefit of the sale of the premises.

[66] This is also a factor this court considers to find indeed the plaintiff was put in a position that it was reasonably expected it could leave the company after the sale of the premises.

[67] The subsequent indecision by the company and the second defendant on the new businesses it wants to venture and having regard to the expectation of the plaintiff pursuant to the above BOD meeting, all point to the fact that the interest of the plaintiff was being disregarded and it is also prejudicial to the same.

[68] This BOD meeting is materially significant to also indicate that the company was indeed only interested in one business ie, the letting of the premises. Further with the successful sale of the same, it is not in favour of pursuing any other business options. This is added reasons in justifying the plaintiff to think over the years it was perfectly entitled to assume that the company would only be involved in one business.

Case Law

[69] Bearing in mind the facts and the findings of the court as narrated above, this court will also show the relevancy of some case law in support of the findings of this court.

[70] First is the case of the Federal Court in *Owen Sim Liang Khui v. Piasau Jaya Sdn Bhd & Anor* [1996] 4 CLJ 716; [1996] 1 MLJ 113 where it was held

> ... the question whether there was oppression or disregard or unfair discrimination or whether the conduct complained of was 'otherwise prejudicial' is one that must eminently be determined according to the facts of each particular case.

[71] Taking note of the above judgment, this court as narrated earlier has shown the actions by the company and the second defendant were oppressive, prejudicial and in disregard of the interest of the plaintiff.

[72] The facts in this case as explained point to these factors to the detriment of the plaintiff.

[73] This case further held:

> Paragraph (a) to the first sub-section of s. 181 is not, as observed by Lord Wilberforce, directed at specific or particular acts or omissions. It is directed at the nature of the conduct complained of. And where attention is called to particular acts or omissions, it is the effect of these which has to be considered. It is not and has never been the law that the section does not bite where what is complained of is but a single act or omission on the part of the wrongdoer. A single act or omission may, by its very nature, have so devastating or far-reaching a consequence upon the rights of a member that its effects may be permanently felt. For the purpose of s. 181(1)(a),it is sufficient that the effects of a single act omission are such that they persist at the date of the presentation of the petition. It is no answer, in those circumstances, for the perpetrators of the act or omission to allege that there was no continuous oppressive conduct up the date of presentation of the petition.

[74] On this note too, in the present case before this court, the actions of the directors representing the second defendants must be taken into account. These include their serious disputes among themselves. Also noted is the indecision up till now by the company in not determining the business that it wishes to venture

in and the refusal to accept the reasonable proposal of the plaintiff to sell it share. All of these mean that the complaint of the plaintiff is not on a single act of the company or the second defendant, but a whole series of continuous acts by both defendants.

[75] Further this case held:

> Section 181(1)(a) of the Act therefore looks to the effect and consequences of the wrong done in determining whether there is oppressive conduct in any given case. Any other construction upon the section would denude it of its beneficial effect and frustrate the intention of Parliament.

[76] Bearing in mind the above passage, as explained there are a series of objectionable acts that had been demonstrated by the plaintiff and this court having assessed these evidence concludes these acts were indeed oppressive against the plaintiff.

[77] The Privy Council in *Re Kong Thai Sawmill (Miri) Sdn Bhd; Kong Thai Sawmill (Miri) Sdn Bhd & Ors v. Ling Beng Sung* [1978] 1 LNS 170; [1978] 2 MLJ 227 in deciding on s. 181 of the Companies Act 1965 said;

> What is attacked by sub-section (1) (a) is not particular acts but the manner in which the affairs of the company are being conducted or the powers of the directors exercised. And these may be held to be 'oppressive' or in 'disregard' even though a particular objectionable act may have been remedied. *A last minute correction by the majority may well leave open a finding that as shown by its conduct over a period, a firm tendency or propensity still exists at the time of the proceedings to oppress the minority or to disregard its interest so calling for a remedy under the section*. (emphasis added).

[78] In the case before this court, as stated the actions of both defendants in the disputes among the directors of the second defendants, the indecision on the business it wants to pursue and the unreasonable conduct in refusing the offer of sale of the plaintiff's shares all have not been addressed to date compounding further the belief that there is indeed oppression on the plaintiff, if not disregard of its interest or actions prejudicial to the same.

[79] Also relevant is the Singapore's Court of Appeal's decision in *Chua Kien How v. Goodwealth Trading Pte Ltd & Anor* [1992] 2 SLR 296 where although it is recognised that the business of a company may change having regard to the memorandum of association, Cha Sek Keong J (as he then was) nonetheless said:

> What was originally intended to be the main object of a company on its incorporation may have ceased to be over the years **if the company embarks on a different type of business** authorized by its memorandum. (emphasis added)

[80] Bearing in mind the above passage, in this case before this court now, there is no evidence to suggest that the company had embarked on a different type of business at all. As explained, precisely because of this reason, the interest of the plaintiff is being disregarded because of the indecision of both defendants to embark on a different type of business.

[81] *Chua Kien How (supra)* went on to find:

> There was sufficient evidence on which Yong Pung How CJ was entitled to find that the appellant had in fact agreed to cease or abandon the business of restaurateurs. He had caused the Hong Kong cooks to be dismissed and all the furniture and kitchen equipment of the restaurant to be sold. He made no effort during the six months prior to the termination of the lease to find new premises to relocate the restaurant.

[82] The passage above indicates quite clearly the substratum of the company is frustrated in a similar fashion to the present case before this court when the premises were sold off. As stated in the passage above a period of six months was taken into account while in the present case before this court, up till now the company is without a business, a period much longer than what is taken into account in the case above.

[83] In *Lew Siew Moi, Datin v. Ann Loong Holdings Sdn Bhd & Ors* [2010] 1 LNS 1430; [2012] 10 MLJ 734 Zainun Ali J (as she then was) in explaining the requirement of oppression said:

> the test commonly applied would be to see whether the conduct of the majority is a visible departure from standards of fair dealing ie whether the conduct was burdensome, harsh and wrongful and includes the event of disregard for interest of members, shareholders or holders of debenture of company

[84] The above passage is guidance for this court to say as explained that the facts and circumstances of the present case showed that the actions or inactions of both defendants on the whole were burdensome, harsh and in disregard of the interest of the plaintiff. As a result this points to the reasonable and justifiable conclusion that indeed there was oppression inflicted against the plaintiff.

[85] Also relevant to be noted is the case of *Koh Jui Hiong & Ors v. Ki Tak Sang & Ors* [2009] 10 CLJ 205; [2009] 8 MLJ 818, another case of alleged minority oppression and where it is stated:

> Section 181 of the Act deserves to receive a liberal and purposive construction

[86] That would indicate that a restrictive interpretation of the operation of the provision of s. 181 of the Companies Act 1965 should always be avoided. If there are only some facts not improbable justifying the invocation of the provision, then redress should be afforded to the minority shareholder.

[87] This is also consistent with *Owen Sim Liang Khui (supra)* that decided whether oppression is proven depends on the facts of each particular case and this court has narrated the facts of this case that justified the findings of this court.

Decision

[88] Based on the foregoing this court determines that the plaintiff has proven its case and therefore makes the following orders:

(a) The company within 14 days of this order appoints an independent qualified accountant or auditor to value the total shares of the plaintiff in the first defendant;

(b) The company is to provide all the necessary documents and assistance within seven days of the appointment to the said accountant or auditor for the valuation to be made;

(c) The said accountant or auditor to notify the plaintiff, the company and the second defendant the valuation within 21 days of his appointment;

(d) The company is to purchase half of the total shares of the plaintiff while the second defendant is to purchase another half of the plaintiff's shares within 30 days of the notification of the valuation by the accountant or auditor.

(e) There would be reduction of the company's capital accordingly upon the purchase of the shares;

(f) The fee of the said accountant or auditor is to be shared equally by both the company and second defendants;

(g) Costs of RM30,000 each is to be paid by the company and second defendants to the plaintiff for this action.

Conclusion

[89] There are sufficient and ample reasons to rule that the plaintiff was oppressed and the action or inaction of the company and second defendant amounted to disregard of the plaintiff's interest and at the same time prejudicial to the same.

[90] The admission by a director of the second defendant that oppression was suffered by the plaintiff, the inaction of the company and second defendant in determining the new business that ought to be undertaken, the harmful and serious disputes among the directors and the action of frustrating the plaintiff's reasonable wish to dispose its shares are all peculiar to the facts of this particular case. And on that note, following *Owen Sim Liang Khui (supra)* as explained, this court as the trial court took note of all these relevant facts in the present case to say s. 181 of the Companies Act 1965 is proven.